



**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 49**

[FAC 2005-98, FAR Case 2015-039; Item IV; Docket No. 2015-0039, Sequence No. 1]

RIN 9000-AN26

**Federal Acquisition Regulations: Audit of Settlement Proposals**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from \$100,000 to align with the threshold for obtaining certified cost or pricing data.

**DATES:** Effective: [Insert date 30 days after date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Ms. Zenaida Delgado, Procurement Analyst, at 202-969-7207, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat

Division at 202-501-4755. Please cite FAC 2005-98, FAR Case 2015-039.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DOD, GSA, and NASA published a proposed rule in the Federal Register at 81 FR 63158 on September 14, 2016, to amend FAR 49.107 to increase the dollar threshold for the audit of prime contract settlement proposals and subcontract settlements submitted in the event of contract termination, from \$100,000 to align with the threshold in FAR 15.403-4(a)(1) for obtaining certified cost or pricing data, which is currently \$750,000.

**II. Discussion and Analysis**

No public comments were submitted in response to the proposed rule. Therefore, there are no changes from the proposed rule made in the final rule.

**III. Expected Cost Savings**

This final rule impacts contractors subject to audits of their termination settlement proposals. The rule is administrative in nature, because it raises a threshold. This rule eliminates termination settlements audits between \$100,000 and the threshold for obtaining certified cost or pricing data, currently \$750,000. Contractors will save costs associated with the preparation and support for the

termination settlement audits. This will also enable faster final settlement payments to contractors, thereby improving contractor cash flow.

#### **IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule does not add any new solicitation provisions or clauses, or impact any existing provisions or clauses.

#### **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **VI. Executive Order 13771**

Pursuant to E.O. 13771, this rule is a deregulatory action. Information on the expected cost savings of this action can be found in section III of the preamble.

## **VII. Regulatory Flexibility Act**

DoD, GSA, and NASA have prepared a final regulatory flexibility analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This final rule amends FAR 49.107, Audit of prime contract settlement proposals and subcontract settlements, to raise the dollar threshold for the audit of prime contract settlement proposals and subcontract settlements submitted in the event of contract termination from \$100,000 to the threshold for obtaining certified cost or pricing data set forth in FAR 15.403-4(a)(1), which is currently \$750,000. The rule is necessary to reduce the administrative burdens associated with termination settlement proposals.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Since the rule raises the audit threshold, even fewer small businesses will be subject to audits of their termination settlement proposals. It is estimated that an average of 4 small entities per year will be relieved from the requirements of supporting an audit of a contract settlement proposal, which is a minute fraction of all contracts awarded to small businesses in a typical year.

The rule imposes no reporting, recordkeeping, or other information collection requirements.

There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

**VIII. Paperwork Reduction Act**

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 49**

Government Procurement.

Dated: April 25, 2018.

William F. Clark,  
Director,  
Office of Government-wide  
Acquisition Policy,  
Office of Acquisition Policy,  
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 49 as set forth below:

**PART 49—TERMINATION OF CONTRACTS**

1. The authority citation for part 49 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 49.107 by revising paragraphs (a) and (b) to read as follows:

**49.107 Audit of prime contract settlement proposals and subcontract settlements.**

(a) The TCO shall refer each prime contractor settlement proposal valued at or above the threshold for obtaining certified cost or pricing data set forth in FAR 15.403-4(a)(1) to the appropriate audit agency for review and recommendations. The TCO may submit settlement proposals of less than the threshold for obtaining certified cost or pricing data to the audit agency. Referrals shall indicate any specific information or data that the TCO considers relevant and shall include facts and circumstances that will assist the audit agency in performing its function. The audit agency shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the

audit agency shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals valued under the threshold for obtaining certified cost or pricing data is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO shall refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when—

(1) The amount exceeds the threshold for obtaining certified cost or pricing data; or

(2) The TCO determines that a complete or partial accounting review is advisable. The audit agency shall submit written comments and recommendations to the TCO. The review by the audit agency does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

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**BILLING CODE 6820-EP**

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